

RULEMAKING NOTICE

Notice Number	Rule Number	Env-Wq 402
1. Agency Name & Address:	2. RSA Authority:	RSA 485-A:6, VII; RSA 485:3, X
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority:	42 U.S.C. 300f <i>et seq.</i> ; 40 CFR Parts 144, 145, & 146
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	X
5. Short Title:	Groundwater Discharge Permits and Registrations	

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-Wq 402, establish standards, criteria, and procedures for groundwater discharge permits, groundwater discharge registrations, and holding tank registrations to prevent pollution and protect groundwater. The focus is to eliminate instances where groundwater is contaminated by the improper disposal of waste and wastewater containing solvents, petroleum products, and other industrial and commercial wastes. All discharges of non-domestic wastewater to the ground must be registered with, and in some cases permitted by, the Department pursuant to RSA 485-A:13, I(a) and RSA 485:3, X. In all cases, the rules prohibit any discharge of non-domestic wastewater containing regulated contaminants above ambient groundwater quality standards (AGQS). Permits for discharges of large quantities domestic wastewater and discharges of non-domestic wastewater to lagoons or via land application also are issued under this program.

The rules are scheduled to expire on July 26, 2015 and so are proposed to be readopted to continue the statutorily-required discharge permit program. **The existing rules will continue in effect pursuant to RSA 541-A:14-a, I, subject to the conditions specified therein.** As part of the readoption, amendments are being proposed to (1) clarify the language and the structure of the existing rules; (2) move statutory and federal definitions to an appendix so rulemaking is not required if a definition changes; (3) align the definitions with recently-adopted definitions in Env-Wq 401; (4) explicitly reference the surface water quality standards established in RSA 485-A; (5) prohibit discharge of liquids that contain medical waste or unused prescription medication; (6) require the applicant to have exclusive deeded rights to the land if the applicant is not the owner in fee of the land; (7) require any discharge of wastewater from a nursing home or medical care facility to meet the nitrate set-backs even if a discharge permit is not required; (8) require applications to depict the boundary of the 100-year flood zone and identify the 100-year base flood elevation; (9) modify the requirement for boring log data for applications for rapid infiltration basins and septic systems to require that the data be based on soil samples collected on continuous intervals to the bottom of the boring; (10) require the data collected to show the location of proposed monitoring wells and surface water quality points to be submitted in a table format; (11) add a requirement for new and renewal applications to submit a vulnerability assessment for potential impacts from natural hazards; (12) modify the time period in which a renewal application must be filed (specifically, establish the period in which to file a renewal application as the 90-day period prior to expiration, rather than any time more than 90 days in advance of expiration); and (13) add a requirement to submit a statement from a licensed P.E. with a renewal application for a permit for a wastewater treatment facility certifying that the treatment systems are adequate to meet water quality objectives and flow volumes.

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6. (b) Brief description of the groups affected:

The rules apply to any individual or entity that needs a groundwater discharge permit or who already holds a groundwater discharge permit and wishes to renew the permit.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Status Implemented	Federal Regulations Implemented
Env-Wq 402 (see also specific sections listed below)	RSA 485-C:1; RSA 485-C:4, VII; RSA 485-C:11	
Env-Wq 402.01 - 402.06	RSA 485-C:6	40 CFR 144, 145, & 146
Env-Wq 402.07 - 402.16	RSA 485-A:13, I(a)	40 CFR 144, 145, & 146
Env-Wq 402.17	RSA 485-A:13-a	
Env-Wq 402.18 - 402.43	RSA 485-A:13, I(a)	40 CFR 144, 145, & 146
Env-Wq 402.44	RSA 541-A:22, IV	

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Debra Sonderegger	Title:	Principal Planner
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-2862
		Fax#:	(603) 271-0656
		E-mail:	

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, September 4, 2015**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, August 24, 2015 at 9:00 AM**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 15:126, dated 07/13/15:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may result in an indeterminable increase in costs for political subdivisions and independently owned businesses.

2. Cite the Federal mandate. Identify the impact on state funds:

There is no federal mandate for these rules. However, the proposed rules address certain activities that are also subject to federal regulations for the underground injection control program authorized by Part C of the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.). The Environmental Protection Agency has promulgated rules at 40 CFR Parts 144, 145, and 146 for the underground injection control program. The Department is authorized to implement the underground injection control program in New Hampshire and receives approximately \$50,000 annually to support the program.

3. Cost and benefits of the proposed rule(s):

The proposed rules may increase costs to political subdivisions and independently owned businesses that hold or wish to renew a groundwater discharge permit. Increased costs may occur as a result of changes to or the addition of the following proposed rules: Env-Wq 402.15(d), Env-Wq 402.15(f), Env-Wq 402.15(n)(4), Env-Wq 402.26(e), and Env-Wq 402.26(f). The impact cannot be determined as costs will vary depending on the facility type, size, location, age, and type of hazard. The Department estimates that on an annual basis it issues 28 groundwater discharge permits and 41 temporary groundwater discharge permits.

A. To State general or State special funds:

The Department states the Department of Resources and Economic Development (DRED) owns four facilities that hold a discharge permit and may be impacted by changes contained in the proposed rules. To the extent DRED would be required to submit a certification or assessment under Env-Wq 402.26(e) or Env-Wq 402.26(f), it is anticipated the costs would be absorbed within DRED's budget.

B. To State citizens and political subdivisions:

See 3 above. No impact on state citizens.

C. To independently owned businesses:

See 3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Some of the proposed changes have the potential to increase costs to anyone who currently holds a 5-year groundwater discharge permit and wishes to renew the permit. From 2009 through 2014, 39 new or renewed 5-year permits were issued to political subdivisions (approximately 8 permits annually). Whether any additional costs are incurred depends on many factors, including whether the permittee's facility is at risk from natural hazards and whether it is for a wastewater treatment system that is expected to continue to operate. Under the New Hampshire Supreme Court's analysis in *City of Concord v. State*, 164 N.H. 130 (2012), the Department believes the proposed revisions are within the scope of modifications to existing programs or responsibilities that do not violate Part I, Article 28-a of the New Hampshire Constitution.